

# **TAB 1**

**To January 20, 2015 Public Comments on Proposed Consent  
Decree *United States v. Linnton Plywood Association, D.J. Ref.*  
*No. 90-11-2-06787/3, Docket number: 2014-27074***



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

## REGION 10

1200 Sixth Avenue  
Seattle, WA 98101

Reply To

Attn Of: ECL-115

DEC 28 2000

E. Walter VanValkenburg  
Registered Agent for  
NW Natural  
900 SW 5th Avenue #2300  
Portland, OR 97204

***Referenced Property Physical Location***  
***7540 NW St Helens Road, Portland, OR***

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This explanatory letter is being sent to all parties to whom EPA sent general notice letters. We have since heard from some of you and understand there may be a request for a general meeting in mid-January and an extension of our suggested response time from December 28, to late-January. Understanding that Portland Harbor is the first large multi-party Superfund site in Oregon, we thought a letter of explanation of some of our key goals and expectations might be helpful, and could perhaps serve as a substitute for, and be more efficient than, a large meeting. We emphasize that anyone with questions should not hesitate to call one of EPA's project managers, Wallace Reid (206-553-1728) or Chip Humphrey (503-326-2678), or one of EPA's attorneys, Elizabeth McKenna (206-553-0016) or Charles Ordine (206-553-1504).

Our primary reason for preferring this written response in lieu of a meeting is our goal of having a first round of sampling work to occur during the upcoming summer sampling season. If we target August for sampling and calculate backward, we find that delaying negotiations until February could result in missing this sampling opportunity. RI/FS Order negotiations have a 90-day statutory negotiating schedule which has proven challenging at large complex sites in the past. Assuming negotiations begin in mid-January, and that negotiations go smoothly, a signed AOC would be achieved by mid-April. Respondents will then have to prepare and submit a first set of deliverables (Phase I Work Plan of projected sampling, with Sampling and Analysis Plan and Health and Safety Plan). An ambitious submission date would be mid-May. EPA, in coordination with DEQ, federal natural resource trustees (NOAA and the Fish and Wildlife Service) and six Tribes, would then supply comments which would likely necessitate meetings to reach compromises among Respondents and reviewers. This would lead to resubmission of this Phase I Work Plan by mid-July, at the latest, to permit mobilization and sampling in August. Based on our collective experience, we believe any additional negotiating time we can build into this schedule may prove critical to collecting data this summer.

In order to facilitate the foregoing, and to manage the site as efficiently as possible, we hope to use lessons learned over 20 years of experience in Region X with large, multi-party Superfund sites. Among those lessons is that large PRP groups, especially those with members with little or no big-site experience, are inefficient (generating the kind of legal fees Superfund's critics like to cite) frustrating both Respondents and EPA. At the remedy implementation stage

STOEL RIVES LLP

by 12/28/00

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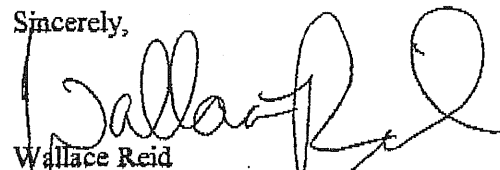
this can be unavoidable, but our experience is that formation of a large PRP group at the investigation/feasibility stage generally has little if any benefit.. With this approach, EPA recognizes the need to create incentives for participants and assurances for non-participants, allowing entities with more Superfund experience to perform the study with substantial efficiencies.

The Duwamish Superfund Site in Seattle, which shares some similarities with Portland Harbor, can be a useful model for the RI/FS stage of the process. At Duwamish, four out of potentially hundreds of responsible parties have agreed to perform the RI/FS. At Portland Harbor, if EPA had only a small subset of responsible parties come forward to perform the RI/FS, EPA would: 1) defer recovery of all past costs to the remedy implementation stage, 2) emphasize that participation does not mean or imply greater or lesser comparative responsibility, 3) have identification of early action-area candidates as an RI/FS task, but not obligate Respondents to implement early actions, leaving implementation to separate Orders with appropriate parties based on location-specific criteria, and 4) assure non-participant small businesses of prompt notification should their property or interests be uniquely implicated. We emphasize that we are available to discuss these and other negotiable criteria with any party, and that an individual reply to our general notice letter is not required by every recipient.

Certain other key matters deserve emphasis. First, the Superfund process at Portland Harbor (as at Duwamish) interfaces with the listing of anadromous fish species under the federal Endangered Species Act, which species are also the subject of treaties of the United States with recognized sovereign Indian nations. This means EPA consultation and coordination with the species-listing agencies and Tribes regarding remedial decisions will be especially critical. Second, the recipients of this letter and our general notice letter do not represent a complete list of potentially responsible parties, nor do they imply greater responsibility for recipients than non-recipients. Recipients were selected because they were previously noticed in one manner or another by DEQ, or are riparian owners/operators of facilities within the initial EPA six-mile National Priorities List assessment area. Prior riparian owner/operator contributors, as well as non-riparian contributors, undoubtedly exist and are obvious omissions. EPA has not yet conducted the kind of PRP search it normally undertakes for large sites, but will conduct one in the future. PRP search costs would be another cost category EPA would defer to remedy implementation if an efficient RI/FS could be promptly undertaken.

We hope this letter clarifies our intentions. We look forward to hearing from you.

Sincerely,

  
 Wallace Reid  
 Remedial Project Manager

cc: Mike Rosen, ODEQ  
 Chip Humphrey, EPA Oregon Ops Office

**Reply to Wallace Reid via****Email [reid.wallace@epa.gov](mailto:reid.wallace@epa.gov) (preferred)****Fax 206-553-0124****Mail U.S. EPA Region 10, 1200 Sixth Avenue, M/S ECL-115, Seattle, WA 98101**

In order to facilitate efficient communications with Potentially Responsible Parties associated with the Portland Harbor Superfund Site, EPA is requesting corrected "Registered Agent", "Responsible Official", "Technical Contact", and "Legal Contact" information. EPA also requests that you review the mailing label on the envelope this information request was included in. Please let EPA know if the individual and company names are correct, and whether the spellings are correct. Also review the street/mailling address for accuracy and spelling, as well as the zip code, and whether a nine-digit zip code is available. Finally, review the referenced property physical location information on the label. This location information should accurately describe the location of riparian properties from which hazardous constituents may have entered Portland Harbor. Please add to, subtract from, or correct this physical location information as appropriate.

**This information request is voluntary, intended solely to facilitate efficient communications.**

**Registered Agent Information (as registered with the Oregon Secretary of State)**

- |                       |                           |
|-----------------------|---------------------------|
| 1. Agent company name | 7. State                  |
| 2. Contact name       | 8. Zip code               |
| 3. Contact title      | 9. General phone number   |
| 4. Physical address   | 10. Contact phone number  |
| 5. Mailing address    | 11. Contact fax number    |
| 6. City               | 12. Contact email address |

**Responsible Official Information (overall responsibility for your company's involvement in the Portland Harbor Superfund Site project) Please also add to, subtract from, or correct the referenced property physical location information.**

- |                               |  |
|-------------------------------|--|
| 1. Company name               | 7. State                               |
| 2. Responsible official name  | 8. Zip code                            |
| 3. Responsible official title | 9. General phone number                |
| 4. Physical address           | 10. Responsible official phone number  |
| 5. Mailing address            | 11. Responsible official fax number    |
| 6. City                       | 12. Responsible official email address |

**Technical Contact Information (internal company staff, consultants, or both)**

- |                            |                                     |
|----------------------------|-------------------------------------|
| 1. Company name            | 7. State                            |
| 2. Technical contact name  | 8. Zip code                         |
| 3. Technical contact title | 9. General phone number             |
| 4. Physical address        | 10. Technical contact phone number  |
| 5. Mailing address         | 11. Technical contact fax number    |
| 6. City                    | 12. Technical contact email address |

**Legal Contact Information (internal counsel, outside counsel, or both)**

- |                        |                                 |
|------------------------|---------------------------------|
| 1. Company name        | 7. State                        |
| 2. Legal contact name  | 8. Zip code                     |
| 3. Legal contact title | 9. General phone number         |
| 4. Physical address    | 10. Legal contact phone number  |
| 5. Mailing address     | 11. Legal contact fax number    |
| 6. City                | 12. Legal contact email address |

# **TAB 2**

**To January 20, 2015 Public Comments on Proposed Consent  
Decree *United States v. Linnton Plywood Association, D.J. Ref.*  
*No. 90-11-2-06787/3, Docket number: 2014-27074***

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SMURFIT-STONE CONTAINER  
CORPORATION, et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 09-10235 (BLS)

Jointly Administered

Ref. Docket Nos. 8696, 8772, 8858 and 8876

**ORDER PURSUANT TO FED. R. BANKR. P. 9019(a) APPROVING THE SETTLEMENT  
AGREEMENT BETWEEN THE DEBTORS AND THE UNITED STATES AND  
BETWEEN THE DEBTORS AND CERTAIN POTENTIALLY RESPONSIBLE PARTIES**

Upon consideration of the Motion<sup>2</sup> of the above-captioned Debtors for entry of an order approving the Settlement Agreement between the Debtors and the United States, and between the Debtors and certain potentially responsible parties ("PRPs") pursuant to Bankruptcy Rule 9019(a); and upon consideration of the Motion and all pleadings related thereto; and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) notice of the Motion was due and proper under the circumstances; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Smurfit-Stone Container Corporation (1401), Smurfit-Stone Container Enterprises, Inc. (1256), Calpine Corrugated, LLC (0470), Cameo Container Corporation (5701), Lot 24D Redevelopment Corporation (6747), Atlanta & Saint Andrews Bay Railway Company (0093), Stone International Services Corporation (9630), Stone Global, Inc. (0806), Stone Connecticut Paperboard Properties, Inc. (8038), Smurfit-Stone Puerto Rico, Inc. (5984), Smurfit Newsprint Corporation (1650), SLP Finance I, LLC (8169), SLP Finance II, LLC (3935), SMBI Inc. (2567), Smurfit-Stone Container Canada Inc. (3988), 3083527 Nova Scotia Company (8836), MBI Limited/Limitée (6565), Smurfit-MBI (1869), 639647 British Columbia Ltd. (7733), B.C. Shipper Supplies Ltd. (7418), Specialty Containers Inc. (6564), SLP Finance General Partnership (9525), Francobec Company (7735), and 605681 N.B. Inc. (1898). The Debtors' corporate headquarters are located at, and the mailing address for each Debtor is, 222 North LaSalle Street, Chicago, Illinois 60601.

<sup>2</sup> Capitalized terms used, but not defined herein, have the meanings assigned to such terms in the Debtors' 9019 motion for approval of the Settlement Agreement, filed on November 19, 2010.



parties in interest; and after due deliberation, and good and sufficient cause appearing therefore, it is hereby:

**ORDERED** that the Motion is granted, with the following clarifications consistent with the United States' Memorandum in Support of 9019 Motion for Approval of Settlement Agreement and Response to Comments: (i) Section V, Paragraph 4(a)(5) is clarified that, subject to all appropriate legal authorities, EPA Region 10 shall place the proceeds received from this settlement into a Portland Harbor Superfund Site Special Account within the EPA Hazardous Substance Superfund. EPA Region 10 intends to dedicate the proceeds received from this settlement to conduct or finance response actions after the Record of Decision for the Portland Harbor Superfund Site is issued. If EPA is able to enter into a settlement with one or more parties who agree to implement the Record of Decision, EPA intends to make such disbursements as agreed to by EPA and such parties from the settlement proceeds to perform work required under the settlement; and (ii) Section V, Paragraph 17(a)(i)(b) is clarified that, subject to all appropriate legal authorities, EPA Region 3 shall place the proceeds received from this settlement into a Sauer Dump Superfund Site Special Account within the EPA Hazardous Substance Superfund. EPA Region 3 will dedicate the proceeds received from this settlement to conduct or finance future response actions at the Sauer Dump Superfund Site provided, however, that nothing herein shall require the disbursement of proceeds for any particular future response action. If one or more PRPs enter into a settlement with EPA to perform future response actions at the Sauer Dump Site, EPA will make such disbursements as agreed to by EPA and such parties from the settlement proceeds to perform work required under the settlement. If the settlement proceeds exceed the cost of future response actions, the funds remaining in the Site-Wide Special Account may be transferred by EPA into the general Superfund; and it is further

**ORDERED** that the Settlement Agreement is hereby approved pursuant to Bankruptcy Rule 9019(a), and the Debtors are authorized to enter into the Settlement Agreement and to perform all of their obligations thereunder and to receive all benefits therefrom, including but not limited to such covenants not to sue and contribution protection contained therein; and it is further

**ORDERED** that the Court approves the Settlement Agreement as fair, reasonable, and consistent with environmental law; and it is further

**ORDERED** that the Debtors' claims agent, Epiq Bankruptcy Solutions, LLC is hereby authorized and empowered to amend the Debtors' claims register to comport with the entry of this Order; and it is further

**ORDERED** that this Court shall retain jurisdiction to hear any and all disputes arising out of the implementation of this Order.

Dated: Wilmington, Delaware  
January 6, 2011

A handwritten signature in black ink, appearing to read "Brendan L. Shannon", written over a horizontal line.

Brendan L. Shannon  
United States Bankruptcy Judge



# **TAB 3**

**To January 20, 2015 Public Comments on Proposed Consent  
Decree *United States v. Linnton Plywood Association, D.J. Ref.*  
*No. 90-11-2-06787/3, Docket number: 2014-27074***



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, WA 98101

RECEIVED

OCT 19 2007

PERKINS CC

October 17, 2007

Reply to  
Attn Of: ORC-158

General Notice Letter Recipient  
Portland Harbor Superfund Site, Portland, Oregon

Re: Portland Harbor Superfund Site Potentially Responsible Parties Meeting;  
Allocation Process and Convening Discussion

Dear Sir/Madam:

We are writing to you because you or your company received a general notice letter regarding potential responsibility for response costs being incurred and that will be incurred in the future related to the Portland Harbor Superfund Site. EPA is inviting you and your legal counsel to attend a meeting in Portland to discuss the current status of the remedial investigation and feasibility study and how that relates to the timing and scope of future negotiations for cleanup. We also wish to discuss how you can be better prepared for future negotiations. EPA has seen at other multi-party sites how a comprehensive allocation process leads to successful negotiations of complex sediment cleanups. We would like to discuss our experiences with the group.

EPA believes that an effective allocation is important to the success of future settlement discussions and wants to support your efforts to convene a PRP Group and prepare. EPA has a number of different resources it can provide to help you convene an allocation process. Specifically, the EPA Conflict Prevention & Resolution Center in Washington, D.C. will provide a confidential convening neutral to assist your efforts. David Batson, EPA's Senior ADR Specialist, will be available to meet with you and other parties after the meeting to confidentially discuss options for convening an allocation process and potential EPA support.

The meeting will be held on November 7, 2007 at the Edith Green-Wendell Wyatt Federal Building located at 1220 S.W. 3<sup>rd</sup> Avenue, Portland, Oregon, and will begin at 9 a.m. in Room G-70 (on the ground floor). The general discussion is scheduled to last no more than two hours and then after a short break, all government staff will leave and Mr.

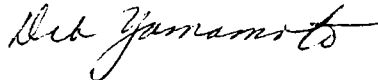
Batson will be available to discuss future activities of the private parties. The room has been reserved for the entire day to ensure that you can continue your meeting until the group decides to end it or break for lunch and reconvene. Any discussions facilitated by Mr. Batson are confidential pursuant to federal law and will not be disclosed to me or any other member of EPA without your permission.

This is a primarily legal or process meeting and it is not being arranged to discuss technical details about the remedial investigation or the data collected to date. If anyone has questions about the studies being undertaken you can call either Chip Humphrey at (503) 326-2678 or Eric Blischke at (503) 326-4006, the Co-lead Remedial Project Managers for the Portland Harbor Superfund Site.

Lori Houck Cora, Assistant Regional Counsel, and Kristine Koch, PRP Search Remedial Project Manager, will be EPA Region 10's representatives at the meeting. You can contact Lori with questions about the meeting at (206) 553-1115, or email her at [cora.lori@epa.gov](mailto:cora.lori@epa.gov).

We hope you or another company representative can attend this meeting.

Sincerely,



Deb Yamamoto, Manager  
Site Cleanup Unit 2  
Office of Environmental Cleanup

cc:

Lori Houck Cora, ORC  
Kristine Koch, ECL  
Chip Humphrey, ECL  
Eric Blischke, ECL  
Company Legal Counsel, if known

# **TAB 4**

**To January 20, 2015 Public Comments on Proposed Consent  
Decree *United States v. Linnton Plywood Association, D.J.* Ref.  
*No. 90-11-2-06787/3, Docket number: 2014-27074***

**TAB 4: Suggested Redline Modifications to address issues with respect to the proposed Insurance Recovery Trust (addressing solely comments with respect to that issue and not with respect to other included comments).**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 3:14-1772
v.	)	
	)	Judge _____
LINNTON PLYWOOD	)	
ASSOCIATION,	)	
	)	
Defendant.	)	
_____	)	

**CONSENT DECREE**

**I. BACKGROUND**

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), the National Oceanic and Atmospheric Administration (“NOAA”), United States Department of Commerce and the United States Department of the Interior (“DOI”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking reimbursement for response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances and for Natural Resource Damages at the Portland Harbor Superfund Site in Portland, Multnomah County, Oregon (the “Site”).

B. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. NOAA and DOI have undertaken, in

related documentation) in which Settling Defendant may have an interest within 30 days from the Effective Date, and immediately notify Trustee of the discovery of any evidence of additional Insurance Policies (even if such discovery occurs more than 30 days after the Effective Date);

b. Take such further actions and execute and deliver such documents and instruments as may be necessary or appropriate (if any) to transfer and/or assign Settling Defendant's rights to Environmental Claims (as ~~that term is defined~~described in the Trust Agreement) for payment under any or all of the Insurance Policies and to authorize the Trust to commence and/or prosecute pending proceedings, and to defend proceedings, in the Settling Defendant's name in connection with any and all of the Insurance Policies the rights to Environmental Claims (as ~~that term is defined in the~~described in the Trust Agreement) under which have been transferred and/or assigned to the Trust;

c. Cooperate with Trustee's efforts to pursue claims and/or causes of action under the Insurance Policies and to avoid any interference with Trustee's recovery efforts or management of the Trust and Trust Fund;

d. Identify any documents or sources of documents that, to Settling Defendant's knowledge, may relate to operations, activities, or corporate histories of entities that conducted operations at the Property ("Property Records");

e. Provide Trustee and the Trust's representatives with full access to Property Records; and

f. Provide Trustee and the Trust's representatives with any other assistance necessary to accomplish the duties, purposes, and goals of the Trust, including but not limited to

Portland Harbor Insurance Recovery Trust Agreement. This covenant not to sue is given in consideration for and is conditioned upon: a) the satisfactory performance by Settling Defendant of its obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VII. and execution of and compliance with the Portland Harbor Insurance Recovery Trust Agreement, including payment of \$50,000 into the Trust and assignment to the Trust of Settling Defendants's rights under the Insurance Policies as described in the Trust Agreement; b) any amount due under Section VIII. (Failure to Comply with Consent Decree); and c) the veracity and completeness of the Financial Information provided to the United States by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Section XV., Paragraph 35. If the Financial Information or Insurance Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 35, is subsequently determined by the United States to be false or, in any material respect, inaccurate, Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Section XII. shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. This covenant not to sue extends only to Settling Defendant and does not extend to any other person. The cash payment made under Paragraph 6 of this Consent Decree Shall be credited toward the confessed judgment. As part of this covenant not to sue, the parties agree that the remainder of the confessed judgment shall be satisfied solely from the Net Proceeds of Sale and from proceeds obtained on account of the rights to Environmental Claims for payment under Insurance Policies, as such ~~which~~ rights are assigned to the Insurance Recovery Trust by operation of the Portland Harbor Superfund Site Insurance Recovery Trust



## PORTLAND HARBOR SUPERFUND SITE INSURANCE RECOVERY TRUST TRUST AGREEMENT

This Trust Agreement ("Agreement") is entered into by, between, and among Linnton Plywood Association, ("Settling Grantor"), and Daniel J. Silver, an individual ("Trustee"), to establish the Portland Harbor Superfund Site Insurance Recovery Trust ("Trust").

WHEREAS, Settling Grantor seeks to avoid difficult and prolonged litigation regarding the Portland Harbor Superfund Site ("Site") and seeks to resolve its potential liabilities to the United States and to the RI/FS Plaintiffs (as defined below) under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601, *et seq.* and all other applicable legal authorities,

WHEREAS the environmental contamination at the site has resulted in losses and damages prior to this Agreement.

WHEREAS the United States and the RI/FS Plaintiffs have unreimbursed costs and will incur future costs that they content Settling Grantor is legally obligated to pay,

WHEREAS, Settling Grantor and the United States have entered into an agreement to settle pursuant to Section 122(g)(7) of CERCLA, 42 U.S.C. § 9622(g)(7), which includes, among other things, contribution protection and a covenant not to sue effective upon and given in consideration for, in part, execution of this Agreement, and Settling Grantor's commitment to comply with this Agreement.

WHEREAS Settling Grantor and RI/FS Plaintiffs have entered into an agreement to settle those claims enumerated in the Settlement Agreement dated

\_\_\_\_ ("Settlement Agreement"), which includes among other things Settling Grantor's execution of this Agreement, and Settling Grantor's commitment to comply with this Agreement.

WHEREAS, Settling Grantor has selected Trustee to be the trustee pursuant to this Agreement, and Trustee is willing to act as trustee. [January 20, 2015 Public Comments on proposed Consent Decree United States v. Linnton Plywood Association, D.J. Ref. No. 90-11-2-06787/3, Docket number: 2014-27074](#)

WHEREAS, the Trust is created pursuant to, and to effectuate, the Consent Decree and the Settlement Agreement.

WHEREAS, the United States and RI/FS Plaintiffs alleged that Settling Grantor is liable for, among other things, response costs and natural resource damages incurred and to be incurred at the Site.

WHEREAS, the Trust is created to allow and accommodate future contributions to the Trust from future grantors, whether presently known or unknown, to further the purposes set forth herein and for the benefit and interest of EPA, ~~and~~ the Federal Natural Resource Trustees and the RI/FS Plaintiffs as described herein.

NOW, THEREFORE, Settling Grantor and Trustee agree as follows:

## I. DEFINITIONS

1. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

- a. "Beneficiaries" shall mean US Beneficiaries and RI/FS Beneficiaries.
- b. "US Beneficiaries" shall mean EPA and any successor departments, agencies, or instrumentalities of the United States, and the Federal Natural Resource Trustees.
- cb. "RI/FS Beneficiaries" shall mean the RI/FS Plaintiffs Union Pacific Railroad Company, TOC Holdings, Inc., Port of Portland, NW Natural, Gunderson LLC, ConocoPhillips Co., City of Portland, Chevron U.S.A. Inc., Evraz Inc. NA, and Arkema Inc.
- db. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.
- ee. "Effective Date" shall mean the date upon which Settling Grantor executes this Agreement, which execution shall occur after entry by the Court of the Consent Decree between the United States and Linnton Plywood Association, a copy of which is attached hereto, but in no event shall such execution occur later than five (5) days following entry of the Consent Decree.
- fd. "Environmental Claims" shall mean any claim related to the Portland Harbor Superfund Site for coverage under an Insurance Policy for property damage, personal injury, or other liability for costs or damages (including Natural Resource Damages and response costs) arising under any federal or state environmental law, or common law, from or related to the discharge, dispersal, release, escape and/or presence of smoke, vapors, fumes, soot, acids, alkalis, chemicals, pollutants, contaminants, hazardous substances, or wastes of any kind, or related to the transportation, generation, disposal, storage, handling, or processing of

comprehensive or commercial general liability, excess, excess/umbrella, umbrella, pollution legal liability, and environmental impairment liability that may have ever been issued to Settling Grantor. Insurance Policies known at the time of signing this Consent Decree are listed in Exhibit 1 to this Agreement.

**jh.** "Portland Harbor Superfund Site Insurance Recovery Trust Fund," "Fund," or "Trust Fund" shall mean the corpus of the Trust established by this Agreement, as further described herein.

**kl.** "Settling Grantor" shall mean Linnton Plywood Association and any successors or assigns.

**lf.** "Site" or "Portland Harbor Superfund Site" shall mean the Portland Harbor Superfund Site, located in the City of Portland, Multnomah County, Oregon that was listed on the National Priorities List ("NPL") on December 1, 2000, 65 Fed. Reg. 75179-01. The Portland Harbor Superfund Site consists of the areal extent of contamination from releases to the lower Willamette River, and also includes upland source areas. The Portland Harbor Superfund Site Assessment Area currently covers River Mile 1 to River Mile 12.

**m.** "Third Parties" shall mean any persons not designated as a Beneficiary under the Trust Agreement or any amendment thereto.

**nk.** "Trust" shall mean the Portland Harbor Superfund Site Insurance Recovery Trust.

**ol.** "Trustee" shall mean \_\_\_\_\_ and any successor trustee.

**pm.** "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

## II. ESTABLISHMENT AND ACCEPTANCE OF TRUST

2. *Trust Fund.* Settling Grantor and Trustee hereby establish the Portland Harbor Superfund Site Insurance Recovery Trust Fund ("Fund" or "Trust Fund") for the benefit of

Beneficiaries as stated herein. Each Grantor and Trustee intends that no Third Parties have access to the Fund. All property in the Trust, and any and all proceeds therefrom, are intended for the investigation, remedy evaluation, cleanup and restoration in connection with the Site. The Trust Fund shall consist of all assets, funds, moneys, and/or other property in the Trust together with all assets, funds, moneys, rights under insurance policies, and/or other property received by and transferred to or paid into the Trust in the future.

3. *Objective and Purpose.* The purposes and functions of the Trust are 1) to receive and manage funds, moneys, rights under insurance policies, and/or other property in accordance with this Agreement for the benefit of Beneficiaries; 2) to pursue monetary recoveries pursuant to rights under insurance policies, and to pursue such other claims and causes of action as may be assigned, conveyed, transferred, or arise out of property assigned, conveyed, or transferred, to the Trust for the benefit of Beneficiaries; and 3) to disburse funds to Beneficiaries in accordance with this Agreement. The Trust has no objective or authority to engage in any trade or business.

4. *Initial Cash Contribution.* The Fund shall consist of, without limitation, initial cash contributions, specified as follows, paid into the Trust by Settling Grantor: Payment in the amount of \$50,000 within thirty (30) days of the Effective Date of the Consent Decree between Settling Grantor and the United States.

5. *Rights Under Insurance Policies.*

- a. The Fund shall consist of, without limitation, all of the Settling Grantor's rights to Environmental Claims for payment under the Insurance Policies (both known and unknown), including without limitation any and all potential or actual Environmental Claims and/or causes of action (including but not limited to causes of action based in contract, tort, extra-contractual theories, statutory claims,

vii. Ensure that the Insurance Policies will remain as undistributed assets of the Settling Grantor in the event of Settling Grantor's dissolution.

f. The provisions of this Paragraph 5 shall survive in the event of the dissolution of Settling Grantor to the maximum extent permitted by O.R.S. § 62.708(2)(e) and (f).

6. *Policy Payments.* The Fund shall consist of, without limitation, any and all payments made by any insurer or any other party pursuant to Section IV of this Agreement in connection with the Insurance Policies including, without limitation, any and all amounts paid by any insurer or any other party in settlement or satisfaction of claims or rights arising under the Insurance Policies ("Policy Payments") and any interest, earnings, and profits thereon, less any payments or distributions made by Trustee pursuant to this Agreement; and

7. *Acceptance of Trust.* Trustee, by his execution of this Agreement, agrees that he understands and accepts the Trust established herein, accepts his rights, powers, duties, and responsibilities as Trustee of the Trust, and agrees to perform his duties and responsibilities as Trustee of the Trust.

### III. FUTURE GRANTOR(S) AND FUNDS

8. *Future Grantor(s).* Trustee shall have authority to permit other and additional Grantor(s) to contribute to the Trust and Trust Fund in connection with future settlement agreements between Beneficiaries and Grantors, and to enter into subsequent agreements with future and additional Grantor(s) binding said Grantor(s) to the terms of this Agreement.

9. *Future Trust Fund Contributions.* Trustee shall have authority to accept, without limitation, assets, funds, moneys, rights under insurance policies, and/or other property, of subsequent Grantor(s) to be added to the Trust Fund and to manage the same as a single

Treasury Regulation § 301.7701-4(e). The Trust shall have no purpose in generating income or profit other than income generated by temporary investment of Trust assets, which income shall be incorporated into the corpus of the Trust and used exclusively for Trust purposes. The Trust has been organized with no objective to continue or engage in the conduct of a trade or business.

## **VII. PAYMENTS FROM THE FUND**

20. *Payments of Professional Fees and Expenses by Trustee.* Trustee shall make payments from the Fund to compensate or reimburse Trustee and persons or entities engaged by Trustee pursuant to Section IV of this Agreement. Additionally, pursuant to the preceding Section, Trustee shall make payments from the Fund for taxes and expenses. Upon payment to third parties pursuant to this paragraph, such funds shall no longer constitute part of the Fund as defined herein.

21. *Disbursement Instructions for Distributions to the Beneficiaries.* Trustee shall make all disbursements from the Fund to US Beneficiaries 75% to EPA and 25% to the Federal Natural Resource Trustees. Trustee shall make all disbursements from the Fund to RI/FS Beneficiaries in the percentages provided in the Settlement Agreement between Settling Grantor and RI/FS Beneficiaries.

22. *Threshold Fund Maintenance.* Trustee shall be entitled to retain in the Fund, in his discretion, up to \$50,000 to further the Trust's purposes as set forth herein, which amount may be withheld from disbursement.

23. *Notice; Disbursement Payments from Fund.* Within fifteen (15) days of receipt of Policy Payments exceeding \$50,000, or when the value of the Fund exceeds \$75,000, Trustee shall notify Beneficiaries in writing. Within fifteen (15) days of providing the above notice, Trustee shall pay the balance of the Fund, less \$50,000 plus reasonable amounts for anticipated expenses, to Beneficiaries in accordance with Paragraph 21.



24. *Direct Disbursement Payments to Beneficiaries.* Trustee shall make all payments to EPA by federal electronic funds transfer ("EFT") into the Portland Harbor Special Account within the EPA Hazardous Substance Superfund, or as otherwise provided by EPA, consistent with written instructions provided by EPA. EPA may retain or use funds received from, or on behalf of, the Trust and deposited into the Portland Harbor Special Account to conduct or finance response actions at or in connection with the Site, or transfer all or any portion of such funds to the EPA Hazardous Substance Superfund. Trustee shall make all payments to the Federal Natural Resource Trustees for the Site by federal electronic funds transfer ("EFT") to NRDAR Account No. 14X5198, or as otherwise provided by the Federal Natural Resource Trustees, consistent with written instructions provided by the Federal Natural Resource Trustees. The Federal Natural Resource Trustees may retain or use funds received from, or on behalf of, Grantors to conduct or finance restoration activities in connection with the Site. Trustee shall make all payments to RI/FS Beneficiaries by EFT to \_\_\_\_\_.

### **VIII. ROLE OF GRANTOR**

25. Except as provided in Section II, Grantors shall have no rights, responsibilities, or obligations pursuant to this Agreement. Grantors have no residual interest or entitlement to the Fund, Trust proceeds, or any proceeds of Trust assets.

### **IX. INSPECTION OF RECORDS, AUDITS, AND REPORTING**

26. *Accounting Records and Audits.* Trustee shall keep or cause to be kept proper books, records, and accounts of all transactions relating to the Trust in such form as will enable Trustee to produce all reports and accountings and to submit to any audit required pursuant to this Agreement. If requested by Beneficiaries, Trustee shall make available all Trust books and records, including accounting records, to Beneficiaries for inspection within five (5) days of Beneficiaries' request. Upon request by Beneficiaries, and in any event in advance of the

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Director, Office of Environmental Cleanup  
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**Federal Natural Resource Trustees**

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U.S. Department of the Interior  
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b. As to Trustee:

Daniel J. Silver  
606 Columbia St. NW  
Olympia, WA 98501

c. As to Grantor:

Jimmy Stahly, General Manager  
Linnton Plywood Association  
10304 NW St. Helens Road  
Portland, OR 97231

d. As to RI/FS Beneficiaries: \_\_\_\_\_.

**XIV. IRREVOCABILITY AND TERMINATION**

36. *Irrevocability of Trust.* The Trust is irrevocable. Grantors retain no equitable, legal, beneficial, or residual interest in the Trust.

- d. amendments or modifications of the Trust may be done without notice to or consent of Grantor(s) and without the necessity of court intervention or approval;
- e. The dissolution of any Grantor (including, but not limited to, Settling Grantor) shall not modify this Agreement or alter the rights, duties, or assets of the Trust, Trustee, or Trust Fund in any way except as otherwise provided herein.

## **XVI. IMMUNITY AND INDEMNIFICATION**

39. *No Liability of Beneficiaries.* Notwithstanding any other provision of this Agreement, the United States, including without limitation US Beneficiaries, and RI/FS Beneficiaries shall not be liable to the Trust, Trustee, or Grantors for any damages or payments whatsoever arising out of matters related to the Trust, and Trustee shall not have power to sue the United States, including without limitation US Beneficiaries, or the RI/FS Beneficiaries in any forum except for the purpose of enforcing the terms of this Agreement.

40. *Extent of Liability of Trustee.* Trustee shall not be liable for his acts, omissions, or defaults, regardless of whether or not occasioned by the negligence of Trustee, nor for the acts, omissions, or defaults of any agent or depository employed, appointed, or selected by Trustee, except for such Trustee's own acts, omissions, or defaults occasioned by the gross negligence or willful misconduct of such Trustee. Trustee shall not be responsible for the acts or omissions of any predecessor Trustee nor, in particular, shall Trustee be liable for such predecessor Trustee's exercise or nonexercise of any power or discretion properly delegated pursuant to this Agreement.

41. *Indemnification of Trustee.* To the extent of Trust assets only, the Trust shall indemnify, hold harmless, and defend, to the extent allowed by law, Trustee from any personal liability to which Trustee may be subjected by reason of any act or omission in Trustee's official

# **TAB 5**

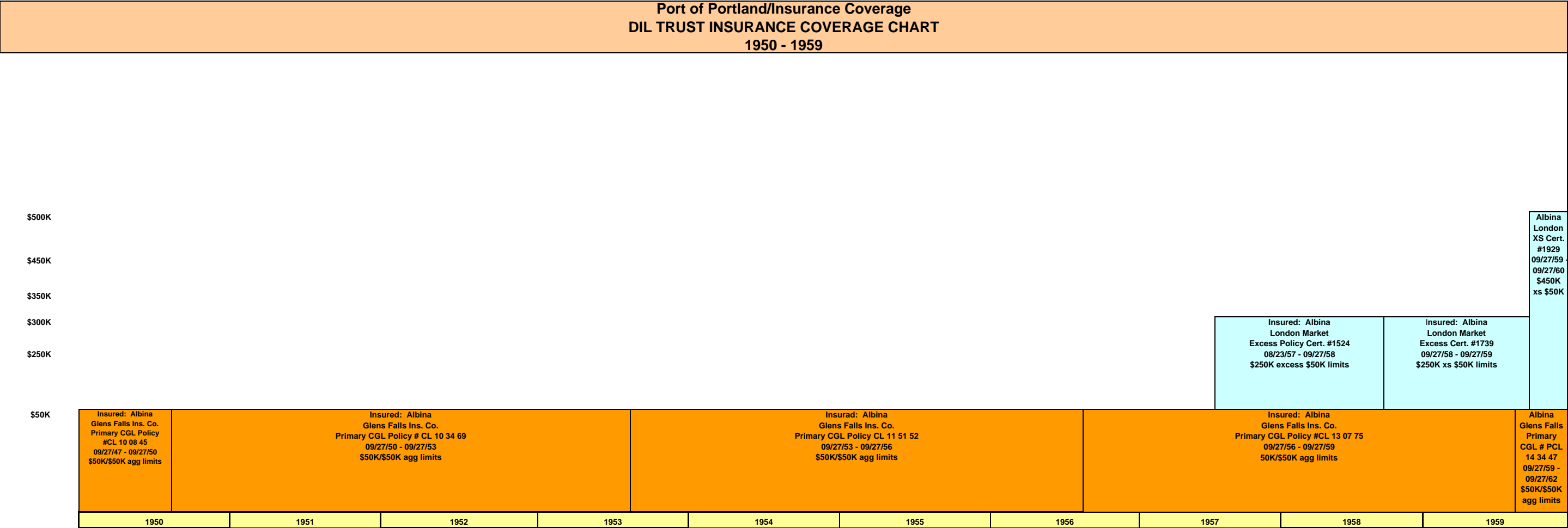
**To January 20, 2015 Public Comments on Proposed Consent  
Decree *United States v. Linnton Plywood Association, D.J.* Ref.  
*No. 90-11-2-06787/3, Docket number: 2014-27074***

Port of Portland/Insurance Coverage  
DIL TRUST INSURANCE COVERAGE CHART \*  
1940 - 1949

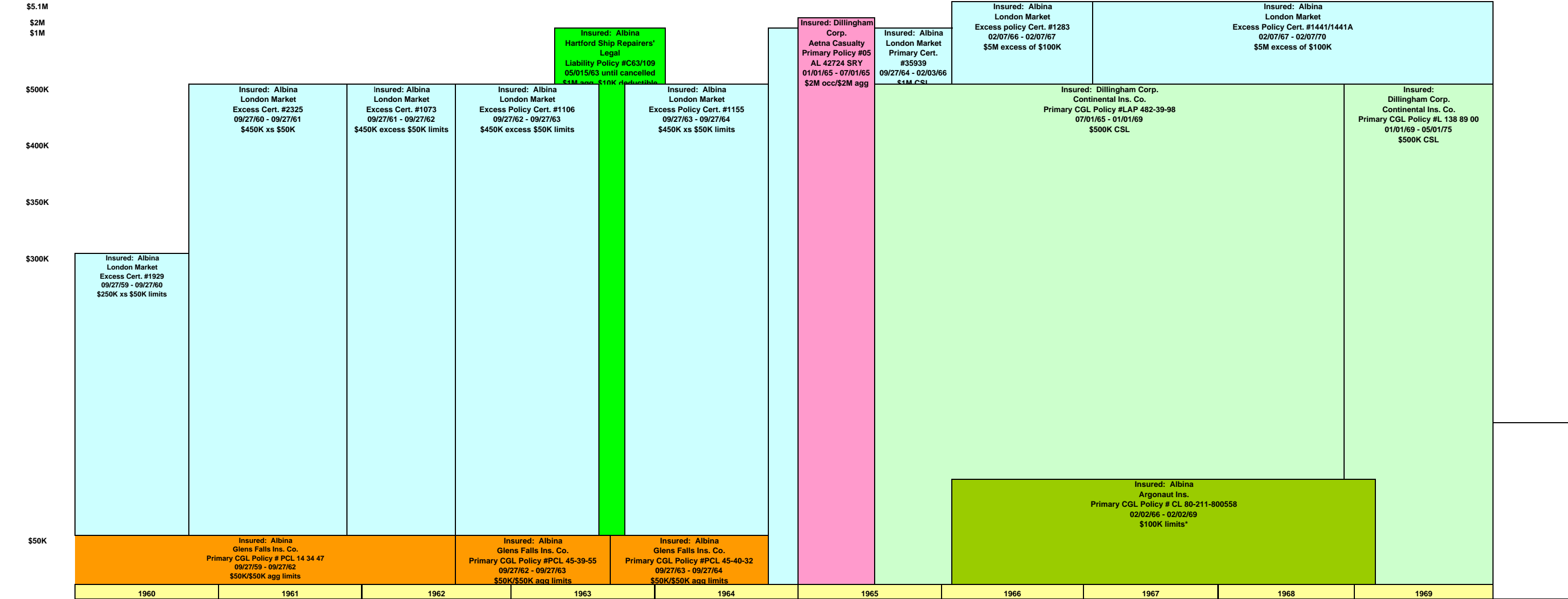
				Insured: Albina Glens Falls Ins. Co. Primary CGL Policy No. Unknown 09/27/43 - 09/27/44 \$50K/\$50K agg limits	Insured: Albina Glens Falls Ins. Co. Primary CGL Policy #SAL 66 01 98 09/27/44 - 09/27/45 \$50K/\$50K agg limits	Insured: Albina Glens Falls Ins. Co. Primary CGL Policy #CL 67 85 34 09/27/45 - 09/27/46 \$50K/\$50K agg limits	Insured: Albina Glens Falls Ins. Co. Primary CGL Policy #RC 13 73 66 09/27/46 - 09/27/47\$50K/\$50K agg limits	Insured: Albina Glens Falls Ins. Co. Primary CGL Policy #CL 10 08 45 09/27/47 - 09/27/50 \$50K/\$50K agg limits	
1940	1941	1942	1943	1944	1945	1946	1947	1948	1949

\* Unless otherwise noted, all policies are general liability/comprehensive general liability policies.  
If known, pollution language is entered as "S&A" (sudden and accidental) or "APE" (Absolute Pollution Exclusion).

Print date: 11/20/14

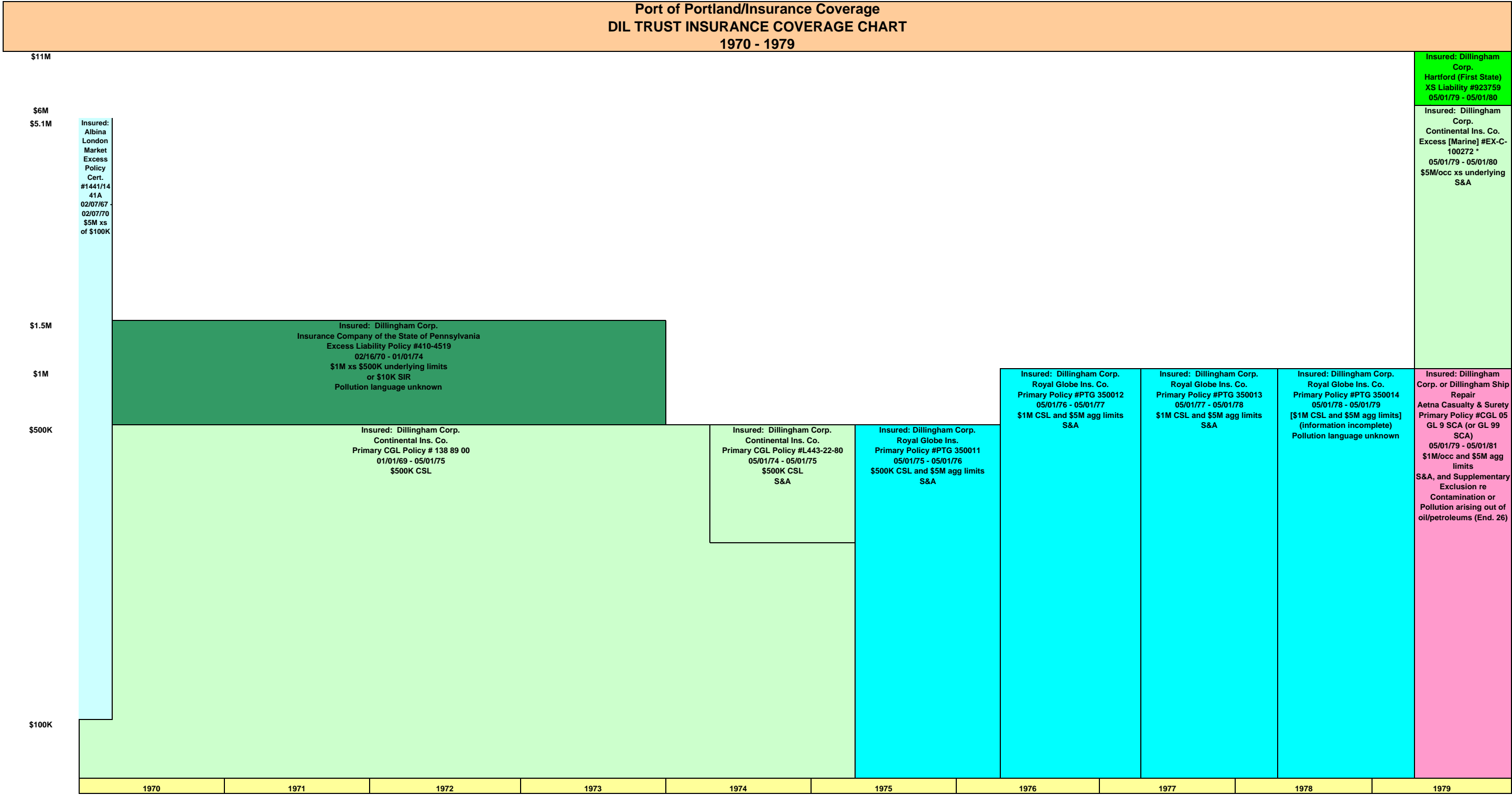


Port of Portland/Insurance Coverage  
DIL TRUST INSURANCE COVERAGE CHART  
1960 - 1969



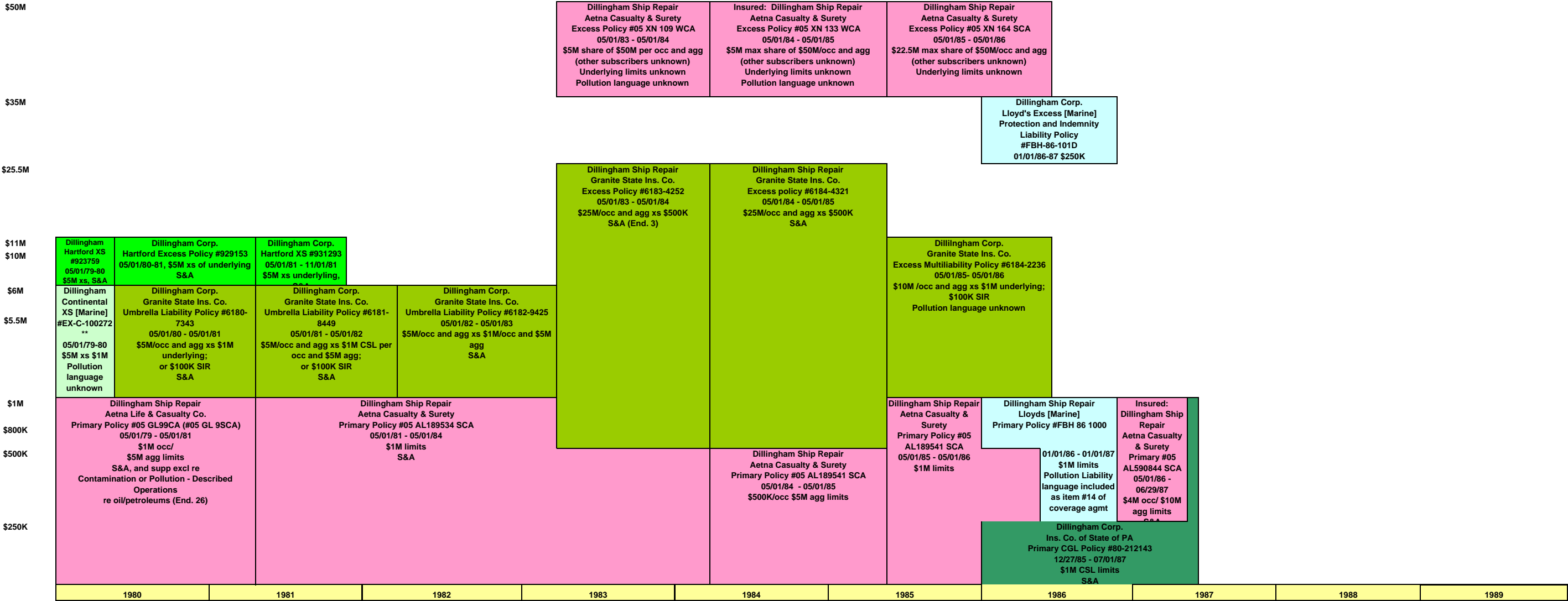
\* Port of Portland spreadsheet listed \$1M/\$1M agg for the Argonaut 02/02/66 - 02/02/69 policy; the \$100M limits entered here are taken from the Historial Albina Coverage spreadsheet provided by client 05/24/13.





\* Scope of policy unclear; appears to be some kind of marine policy.

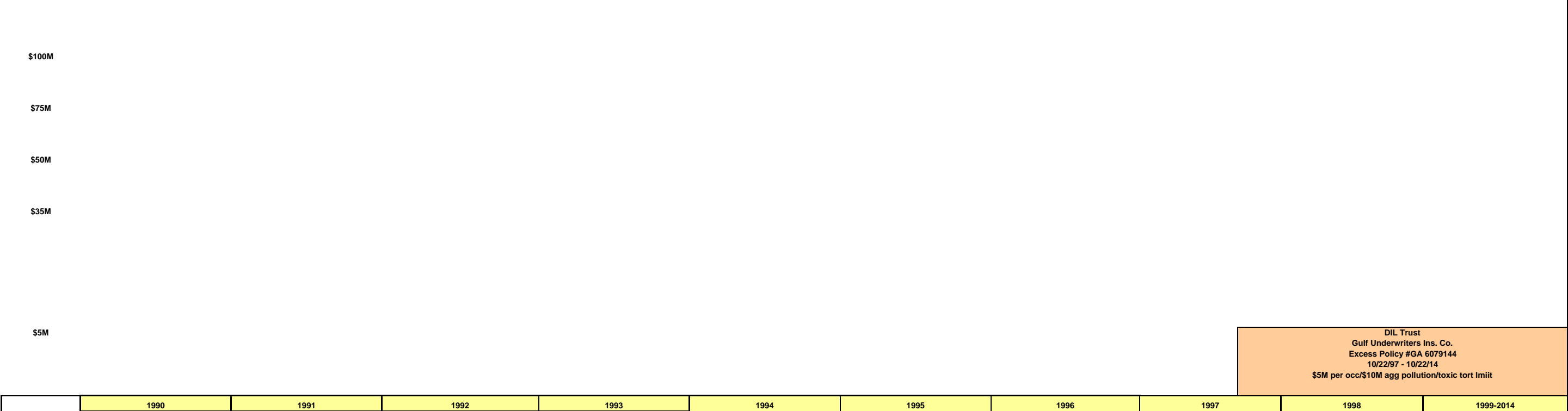
Port of Portland/Insurance Coverage  
DIL TRUST INSURANCE COVERAGE CHART  
1980 - 1989 \*



\* Excludes policies with absolute pollution exclusion.

\*\* Scope of policy unclear; appears to be some kind of marine policy.

<p align="center"> <b>Port of Portland/Insurance Coverage</b>  <b>DIL TRUST INSURANCE COVERAGE CHART</b>  <b>1990 - 2014 *</b> </p>
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\* Excludes policies with absolute P.E.